

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of)	
)	
Distribution of 2014-2017)	Docket No. 16-CRB-0009-CD
Cable Royalty Funds)	(2014-2017)
_____)	

**MULTIGROUP CLAIMANTS' MOTION FOR MODIFICATION
OF JUDGES' ORDER OF SEPTEMBER 12, 2019**

Following two *Motions to Amend Petition to Participate in Distribution Proceedings* filed by Multigroup Claimants (MC), on September 12, 2019, the Judges issued an order granting the *Second Motion to Amend Petition to Participate in Distribution Proceedings*.

Therein, in a footnote, the Judges ruled that MC did not have authority to file claims on behalf of Raycom Sports. However, there is no evidence to support such a conclusion, and so MC now asks that the Judges reconsider their order and modify it accordingly.

At footnote 4 of the Order, the Judges state, in relevant part:

“Although the Second Motion does not request that the claims that MC filed on behalf of Raycom Sports and its affiliates be withdrawn, *the Judges find that MC did not have the authority to file those claims* and that Raycom Sports directed MC to withdraw the claims. Second Motion, Exhibit 2, email dated May 21, 2019 from Ellenann Yelverton to Brian D. Boydston (“please withdraw any claims you assert for Raycom Sports.”). MC appears to *concede* that such claims are invalid. See Second Motion at 3-4 (“any filings made pursuant to the then-terminated agreement with IPG for calendar years 2013 and forward would have been, according to Raycom Sports, without authorization and invalid at the time or their making.”). *Therefore, the Judges dismiss the claims because they were filed without the requisite authority.* See 37 CFR 360.4(b)(2)(vi) (joint claims must include a declaration of authority to file the claim).”

Order at fn. 4 (emphasis added).

The 2015-2017 claims were filed in July 2016, July 2017, and July 2018. Consequently, for the Judges to affirmatively conclude that MC had no authority to file claims for Raycom Sports' on such dates, *some* evidence would need to exist that *as of such dates* Raycom Sports had notified MC (or its predecessor) that MC had no such authority.¹

As the Judges even acknowledge, the *only* evidence before the Judges is the letter received by MC's legal counsel from Raycom on May 16, 2019, and the email correspondence relating thereto – evidence post-dating the filing of the Raycom Sports claims in July 2016, July 2017, and July 2018.² In fact, in MC's motions and in the email correspondence, MC's legal counsel expressly indicates that he “has no record or recollection” of any prior correspondence terminating the IPG/Raycom agreement, “nor does [his] client”. See Second Motion at 1; Second Motion at Exhibit 2 (May 21, 2019 email from Boydston). Moreover, in the email correspondence not only does the undersigned express skepticism as to whether a March 2012 termination letter was actually sent, but presses the Raycom Sports representative to provide evidence

¹ No issue exists that an agreement between MC's predecessor and Raycom previously existed, a matter that has been addressed in several prior distribution proceedings.

² Order at p 4: “As discussed, the only evidence on the record before us are the emails between MC's counsel and Ms. Yelverton, Deputy General Counsel to Raycom Sports Network's parent, which included a letter Ms. Yelverton sent to MC's counsel.”

demonstrating that it was actually sent, *and* addresses the veracity of assertions made within the alleged March 2012 letter.³

In order to make MC’s position perfectly clear, in the course of dealing with Raycom, MC informed Raycom:

“[We] will promptly withdraw any claims in the 2014-2017 proceedings based solely on your current contention that you sent a notice of termination in 2012 -- not an acknowledgment that the notice of termination was actually provided ...”

Id.

As a matter of background, MC’s counsel reiterated his skepticism in both of MC’s motions, noting that while Raycom contended that it sent a notice of termination in March 2012, Raycom had proximately received multiple emails from MC’s predecessor identifying its current address, and MC had located several email communications to Raycom Sports personnel subsequent to March 2, 2012 to which no response was forthcoming from Raycom that a notice of termination had previously been sent. Second Motion at fn. 1 and fn. 3. While the Judges observe that MC provided no evidentiary support of the same (Order at fn. 2), MC was not directed to provide evidence going toward such background fact, nor would such evidence even go toward the singular issue before the Judges, i.e., whether MC *now* had authority to continue prosecuting claims for Raycom Sports programming following the May 2019 letter, or was *now* obligated to

³ MC’s counsel asks Raycom if there is any email or other correspondence relating to the alleged March 2012 correspondence because it is likely that there would be some (see Second Motion, Exhibit 2 (May 21, 2019 email from Boydston)). MC’s counsel also addressed a contention in the March 2012 letter that it had informed IPG on “several occasions” that it did not control the rights to ACC Basketball (id. at June 7, 2019 email), a contention MC expressly disputes. As reflected, Raycom refused to produce any evidence of the foregoing.

omit Raycom Sports from its Petition to Participate. Reference to the background facts was made in both of MC's motions for no purpose other than to make clear that Raycom's assertion that a March 2012 letter was sent to the undersigned was not unchallenged, *not* for the Judges to expand the narrow issues relating to the motion.

Moreover, while the Judges characterize MC as "conceding" that Raycom's 2015-2017 claims are invalid, that was not MC's stated position. MC's position, set forth in its second motion and expressed only in response to the Judges' query as to whether Raycom intended to participate in the 2014-2017 proceedings, was to observe that Raycom would be precluded from doing so *if* Raycom maintained that MC did not have the authority to make the Raycom claims in July 2016, July 2017, and July 2018. Such observation is clearly not a "concession" as to MC's authority as of the filing of those claims, or a concession as to the validity of such claims when they were filed.

As such, it appears from the Order that the Judges addressed a matter that was not before them – i.e., whether MC had authority to make the Raycom claims in July 2016, July 2017, and July 2018. No evidence had been submitted, either in support or in opposition to that question, nor was it relevant to the motion at hand. Therefore, MC asks that the Judges modify their Order of September 12, 2019, in order to omit any ruling as to MC's authority to make the Raycom claims at the time they were filed.

Respectfully submitted,

Dated: September 17, 2019

_____/s/_____
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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of September, 2019, a copy of the foregoing was provided to each of the parties on the attached service list via the Copyright Royalty Judges' eCRB electronic filing system.

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Proof of Delivery

I hereby certify that on Tuesday, September 17, 2019, I provided a true and correct copy of the MULTIGROUP CLAIMANTS' MOTION FOR MODIFICATION OF JUDGES' ORDER OF SEPTEMBER 12, 2019 to the following:

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